

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Wal-Mart Stores, Inc.)	
	Dist. 13, Map 140K, Group F, Control Map 140F,)	
	Parcel 32.03, S.I. 001)	
	Commercial Property)	Gibson County
	Tax Year 2006)	
	Wal-Mart Realty Co.)	
	Dist. 3, Map 165O, Group G, Control Map 165J,)	
	Parcel 30.04)	
	Commercial Property)	
	Tax Year 2006)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Parcel 30.04

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$522,800	\$1,854,900	\$2,377,700	\$951,080

Parcel 32.03 - 001

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$378,300	\$1,841,400	\$2,219,700	\$887,880

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 22, 2007 in Jackson, Tennessee. In attendance at the hearing were Peggy Everett, an employee of the taxpayer, Linda Tilley, Gibson County Property Assessor, and Bryan Kinsey, the Regional Appraisal Supervisor for the Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of recently closed Wal-Mart stores located in Milan and Humboldt, Tennessee. The parcels will be described in greater detail below.

I. Jurisdiction

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the fact that the disputed appraisals were not appealed to the Gibson County Board of Equalization. Instead, the taxpayer filed direct appeals with the State Board of Equalization which were received on August 4, 2006.¹

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of

¹ The appeals were transmitted via FedEx overnight delivery on August 3, 2006.

Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). Thus, the administrative judge must determine whether the taxpayer had reasonable cause for not appealing to the Gibson County Board of Equalization.

The taxpayer's representative, Peggy Everett, testified that she contacted the assessor of property, Linda Tilley, by telephone on June 12, 2006 in order to appeal the appraisals at issue. According to Ms. Everett, she was told that June 15, 2006 was the deadline for appealing. Ms. Everett stated that it was her understanding from this conversation that the taxpayer could appeal in writing.² Accordingly, on June 13, 2006 Ms. Everett sent separate letters for both parcels to Ms. Tilley's office which stated in relevant part that "[w]e are protesting the value placed on this property this year as we believe it to be a disproportionate valuation in comparison to fair market value and equalization. . . ." The letters were accompanied by signed appeal forms.³

Ms. Everett testified that she subsequently called the Assessor's office on June 22, 2006 and June 23, 2006 to ascertain whether the local board had issued rulings on the written appeals. Ms. Everett stated in substance that Ms. Tilley agreed to reduce the improvement values on both parcels by 20%, but indicated it was too late to appeal to the local board because it had already adjourned.

Ms. Tilley had a much different recollection concerning the sequence of events culminating in the taxpayer's appeals to the State Board of Equalization. Ms. Tilley testified that she spoke with Ms. Everett for the first time on June 20, 2006 after receiving Ms. Everett's letters. According to Ms. Tilley, she called Ms. Everett and advised her that this same day was the final day of commercial hearings. Ms. Tilley stated that she offered Ms. Everett a 20% reduction in the improvement values for both parcels and Ms. Everett

² Certain counties allow written appearances while other counties require personal appearances. See Tenn. Code Ann. § 67-5-1407(e)(2).

³ The appeal forms were actually those utilized by another county's local board of equalization. Gibson County apparently does not require that a specific appeal form be completed.

accepted her offer. Ms. Tilley effectively rescinded the reductions after Ms. Everett filed appeals with the State Board of Equalization.⁴

The administrative judge cannot begin to reconcile the conflicting testimony absent additional evidence. Nonetheless, the administrative judge finds both Ms. Everett and Ms. Tilley were credible witnesses who honestly believed their recollection was correct. The administrative judge finds it most reasonable to conclude that both parties acted in good faith and simply had a misunderstanding.

Ironically, the administrative judge finds it unnecessary to determine whether the foregoing constitutes reasonable cause. The administrative judge finds that pursuant to Tenn. Code Ann. § 67-5-508(a)(2), the assessor of property had a notice published in the local newspaper advising citizens of the dates the Gibson County Board of Equalization would be in session to hear appeals. The notice provided in relevant part that:

THE BOARD WILL ACCEPT APPEALS FOR TAX YEAR
2006 ONLY UNTIL THE LAST DAY OF ITS 2006
REGULAR SESSION, WHICH WILL BE JUNE 23, 2006.

The administrative judge finds that the taxpayer should have been allowed until June 23, 2006 to appeal to the Gibson County Board of Equalization. The administrative judge finds that as a matter of due process the taxpayer had no alternative except to file a direct appeal with the State Board of Equalization. Hence, the administrative judge finds that the State Board of Equalization has jurisdiction over this appeal.

II. Value – Taxpayer’s Contentions

A. Parcel 32.03, S.I. 001

This parcel consists of an 8.9 acre tract improved with a now closed 15 year old Wal-Mart containing approximately 67,270square feet of weighted area located at 6025 S. 1st Street in Milan, Tennessee. The taxpayer utilizes subject land pursuant to a ground lease which expires in 2017.

The taxpayer contended that this parcel should be appraised at \$895,300. Ms. Everett testified that subject building was offered for sale in September of 2005 at a price of \$517,000. According to Ms. Everett, the taxpayer received three offers at \$517,000. On May 10, 2006, the taxpayer entered into a contract to sell subject building for \$517,000. The sale has not yet closed.

⁴ It is unclear to the administrative judge how Ms. Tilley could unilaterally reduce the values or rescind those reductions since she was not correcting an error pursuant to Tenn. Code Ann. § 67-5-509 and the county board of equalization had already convened.

Ms. Everett maintained that subject property should be appraised by adding the assessor's current land appraisal of \$378,000 to the \$517,000 contract price for the building. This results in a total value of \$895,000.

B. Parcel 30.04

This parcel consists of a 12.3 acre tract improved with a now closed 16 year old Wal-Mart containing approximately 73,696 square feet of weighted area located at 2500 N. Central Avenue in Humboldt, Tennessee.

The taxpayer contended that this parcel should be appraised at \$650,000. In support of this position, Ms. Everett testified that subject property was listed for sale in April of 2005 at \$1,265,000. According to Ms. Everett, the taxpayer received offers of \$400,000 and \$650,000. The taxpayer accepted the \$650,000 offer, but it was withdrawn during the due diligence period. The taxpayer then accepted the \$400,000 offer which closed on January 31, 2007.

Ms. Everett maintained that the \$650,000 offer should be adopted as the basis of valuation. Ms. Everett stated that she believed the \$400,000 was somewhat low and not a true indicator of market value.

III. Value – Assessor's Contentions.

Unlike the taxpayer, the assessor of property considered both parcels collectively in arriving at a contended value of \$1,265,000 for each parcel. In support of this position, the assessor of property relied primarily on the testimony and written analysis of Bryan Kinsey, the Regional Appraisal Supervisor for the Division of Property Assessments.

Mr. Kinsey maintained that the two parcels should be valued equally due to their similarities in age, size and location. Mr. Kinsey argued that the sale contract on the Milan Store and the recent sale of the Humboldt store were below market value "fire sales." Mr. Kinsey noted that both stores had been closed to make way for new Wal-Mart Supercenters in each community.

Mr. Kinsey asserted that his recommended value of \$1,265,000 is supported by two factors. First, the \$1,265,000 listing price for the Humboldt store appeared reasonable and was actually the taxpayer's original contention of value as indicated on the appeal form. Second, an independent fee appraiser, R. K. Barnes and Associates, appraised the "as is" value of the Humboldt Wal-Mart at \$1,150,000 as of January 31, 2005. Mr. Barnes went on to project a rent stabilized value of \$1,740,000 as of April 1, 2009.

Ms. Tilley also testified concerning several land sales near the Humboldt store. Ms. Tilley argued that the land sales demonstrate the taxpayer has placed little, if any, value on the building.

IV. Analysis

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

Since the taxpayer is appealing from the determination of the Gibson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that the taxpayer introduced insufficient evidence to support Ms. Everett's contentions of value. The administrative judge finds that the taxpayer did not introduce a cost, sales comparison or income approach into evidence. Moreover, the administrative judge finds that most of Ms. Everett's analysis concerned events which occurred after the assessment date of January 1, 2006 and are therefore irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3. Finally, the administrative judge finds that even if all the post-assessment date proof is considered, it must still be concluded that Wal-Mart was more concerned with disposing of subject properties than realizing full market value.

Based upon the foregoing, the administrative judge would normally affirm the current appraisals based upon presumptions of correctness. In this case, however, the administrative judge finds Mr. Kinsey's analysis was certainly reasonable and established the upper limit of value. Accordingly, the administrative judge finds subject properties should both be appraised at \$1,265,000 absent additional evidence.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2006:

Parcel 30.04

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$522,800	\$742,200	\$1,265,000	\$506,000

Parcel 32.03 - 001

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$378,300	\$886,700	\$1,265,000	\$506,000


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of June, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Peggy Everett
Linda Tilley, Assessor of Property